

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Anderson County

Brooks P. Goldsmith, Circuit Court Judge

JAMARIO QUINTON JONES,

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PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001356

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel was ineffective in telling the jury that petitioner was a convicted felon when it put his character in issue?

STATEMENT

Petitioner was convicted of armed robbery, burglary in the first degree, and possession of a weapon during a violent crime after a jury trial held before the Honorable R. Lawton McIntosh on February 13-15, 2012, in Anderson County. Respective sentences were twenty (20) years, twenty (20) years and five (5) years with the five (5) year sentence to be served consecutively to the other sentences. Donald L. Smith, Esquire was trial counsel. Rame Campbell, Esquire and Josh Allen, Esquire were the assistant solicitors. (App. 1 – App. 444)

Petitioner appealed his convictions and they were affirmed by the Court of Appeals on January 29, 2014. State v. Jones, 2014-UP-040. App. 458)

Petitioner filed an application for post-conviction relief on August 13, 2014. App. 445-App.457). Respondent filed a return dated January 13, 2016. (App. 458 - App. 463). An evidentiary hearing was held on February 9, 2016, before the Honorable Brooks P. Goldsmith. Petitioner was present and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick L. Schmeckpeper, Assistant Attorney General. Petitioner testified in his own behalf at the hearing. Trial counsel also testified. App. 464 – App. 490. On June 7, 2016, Judge Goldsmith signed an order denying and dismissing the application for post-conviction relief. (App. 491 – App. 499).

This petition follows.

ARGUMENT

Trial counsel was ineffective in telling the jury that petitioner was a convicted felon because it put petitioner's character into issue.

Petitioner was tried for armed robbery, first degree burglary, and possession of a weapon. On April 15, 2011, he was accused of entering the residence of Ronni Bently with a pistol and took approximately \$350.00 in cash from her. Melody Ellis was a co-defendant but was not being tried. Dancel Taylor was also in the residence with her two small children ages one and three. (App. 60, line 6 – App. 61, line 4). Melody Ellis went over to Darcel who was with her one year old and started kicking both of them and injuring them. (App. 61, lines 14 – 23)

During closing argument trial counsel argued to the jury that petitioner was a convicted felon and he had a gun. (App. 416, lines 6-10). At the evidentiary hearing he explained that he told the jury petitioner was a felon to explain why he was running away from the scene. It was trial strategy. (App. 486, line 1 – App. 487, line 12).

In Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995) the Court wrote that “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness.” Trial counsel has not done that in this case. Instead, he placed petitioner's character in issue making him seem even more guilty.

In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); *189State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the Court noted: "Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules." (citation omitted). In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), the Court elaborated on the subject:


It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. *See, e.g., State v. Gregory*, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. *See, United States v. Johnson*, 610 F.2d 194 (4th Cir.1979); *State v. Byers*, 277 S.C. 176, 284 S.E.2d 360 (1981); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. *See, State v. Wilson*, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish some element, i.e., intent or motive, of the crime charged. *See, e.g., State v. Lyle, supra; State v. South*, 285 S.C. 529, 331 S.E.2d 775 (1985); and *State v. Huggins*, 285 S.C. 361, 329 S.E.2d 759 (1985).

293 S.C. at 324-325, 360 S.E.2d at 319.

Trial counsel's error prejudiced petitioner.

CONCLUSION

Petitioner should be given a new trial.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2017.

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PETITIONER


V.

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RESPONDENT

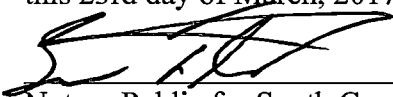
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Jamario Quinton Jones, #335879, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of March, 2017.



Robert M. Pachak
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 23rd day of March, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.